

## REMARKS

Claims 1 – 22 and 30 - 35 are in the application. Claims 1 – 3, 6, 30, 31, and 33 – 35 were previously presented; claims 23 – 29 are canceled; and claims 4, 5, and 7 – 22 remain unchanged from the original versions thereof. Claims 1, 30, 31, and 33 – 35 are the independent claims herein.

No new matter has been added to the application as a result of the present Response. Reconsideration and further examination are respectfully requested.

### **Claim Rejections – 35 USC § 112**

Claims 1 - 35 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner stated the term "segments of receipts" was indefinite. This rejection is respectfully traversed.

As a matter of first note, Applicant submits that claims 1 – 22 and 30 – 35 are pending. Accordingly, this Response will be proceed on the basis of those pending claims.

Applicant respectfully notes that Office Action's rejection for reciting "segments of receipts" and further examination of the application based on "segments of receipts" is a mistake. Applicant submits that subject claims recite "segments of recipients" - not the supposed "segments of receipts". It is clear from the Office Action that the Examiner used the mistaken reading of the claims in interpreting and examining the current application (e.g., "The examiner will use 'segments of receipts' to review the claims but further definition is required." FOA, page 2)

Therefore, Applicant requests the reconsideration and withdrawal of the rejection of claims 1- 35 under 35 USC 112, 2<sup>nd</sup> paragraph. As stated hereinabove, the rejections listed in the Final Office Action dated May 22, 2007 include a clear, obvious, and

fundamental mistake regarding what is claimed by Applicant. Such a mistaken reading of the claims does not support a prima facie rejection of claims 1 – 22 and 30 - 35 under 35 USC 112, 2<sup>nd</sup> paragraph.

Furthermore, Applicant respectfully requests the reconsideration and withdrawal of the finality of the Office Action dated May 22, 2007 since all of the rejections therein are based on the mistaken reading of the claims to include “segments of receipts”, as admitted in the Office Action at page 2.

### **Claim Rejections – 35 USC § 103**

Claims 1 - 35 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lancaster U.S. Patent Publication No. 2002/0194094 A1 in view of Kotler (Marketing Management). This rejection is respectfully traversed.

Regarding claims 1, 23, 30, and 31, the Office Action explicitly cited and relied upon Lancaster for disclosing all aspects of the prior version of the subject claims except for the aspect of “determining marketing segments”. Regarding “determining marketing segments”, the Office Action stated that this aspect was inherently disclosed by Lancaster but explicitly disclosed in Kotler. Therefore, the Office Action cited and relied upon Kotler, specifically at pages 278 and the BOA example disclosed on pages 293 – 294, for disclosing determining marketing segments.

Applicant reiterates that the claimed “segment of recipients” (i.e., portion of the recited plurality of potential recipients) is neither explicitly nor inherently disclosed or suggested by Kotler. Kotler instead discloses and discusses segmenting a broad marketplace (e.g., computers or soft-drinks). Kotler explicitly states and defines a market segment as “a group of customers who share a similar set of wants”. (See Kotler, p. 279) Kotler does not mention or suggest the discussed customers being recipients.

Whereas Applicant's claimed "segment of recipients" refers to a portion (i.e., segment) of the claimed plurality of potential recipients, Kotler's "marketing segments" explicitly refer to dividing a broad economic marketplace into smaller segments. (See Kotler, page 279) It is clear that Kotler's segment marketing and market segmentation are not the same as the claimed "segments of recipients". Applicant's claims relate to dividing a plurality of potential recipients into a plurality of segments of recipients.

Thus, it is clear that the explicit segment marketing and market segmentation of Kotler is not the same as or suggestive of Applicant's claimed "segments of recipients".

Furthermore, Lancaster does not, even inherently, disclose or suggest the relied upon marketing segment of recipients. In order to inherently disclose a claimed element, the cited and relied upon reference must necessarily include the element. However, there is nothing in Lancaster or common knowledge that would dictate that the Lancaster customer information (i.e., "financial status" or "preferences of the customer regarding terms or features of the base product", See Lancaster, paragraph 43) necessarily includes the claimed aspect of a "segment of recipients".

Applicant thus respectfully submits that the cited and relied upon combination of Lancaster and Kotler fails to disclose or suggest the claimed "determining a plurality of segments of recipients from a plurality of potential recipients of a communication regarding a financial product, each of said plurality of segments including at least one member of said plurality of potential recipients and having a predetermined associated response rate, wherein a segment's associated response rate is indicative of a member of said segment exhibiting a designated behavior after receiving said communication".

Support for the preceding emphasized portion of the claims may be found in the Specification at least at paragraph [0039] where it is clearly disclosed that the response rate is determined prior to being used to determine what recipients receive future communications (i.e., predetermined).

Applicant notes that Lancaster is silent regarding a response rate and instead seeks to match customer's needs with offerings of a combination of financial products.

Lancaster does not consider any response rates predetermined for customers in the decision-making process of whom to offer/pitch the combination of products. Lancaster appears to provide that which has long been practiced – trying to guess what a customer wants or needs and/or “up-selling” products.

Therefore, it is clear that the combination of Lancaster and Kotler fails to disclose that which is claimed by Applicant. Accordingly, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 1, 30, and 31 under 35 USC 103(a).

Claims 2 – 22 depend from claim 1 and claim 32 depends from claim 31. Applicant respectfully submits that claims 2 – 22 and 32 are patentable over Lancaster and Kotler under 35 USC 103(a) for at least depending from a patentable base claim. Applicant respectfully submits that claims 33 – 35 are patentable for at least the same reasons as claims 1, 30, and 31.

Applicant reiterates the request for the reconsideration and withdrawal of the finality of the Office Action dated May 22, 2007 since the rejections therein are based on the mistaken reading of the claims to include “segments of receipts”, as admitted in the Office Action a page 2.

### CONCLUSION

Accordingly, Applicants respectfully request allowance of the pending claims. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned via telephone at (203) 972-5985.

Respectfully submitted,

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Date

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